

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

JOHNNY KENNEDY,

Plaintiff,

v.

CASE NO. 2:08-CV-10267  
HONORABLE ARTHUR J. TARNOW

BRUCE L. CURTIS, et al.,

Defendants.

/

**ORDER DENYING MOTION TO PROCEED WITHOUT PREPAYMENT OF FEES  
AND COSTS AND DISMISSING COMPLAINT WITHOUT PREJUDICE**

Plaintiff Johnny Kennedy, a state prisoner currently confined at the Pine River Correctional Facility in St. Louis, Michigan, has filed a civil rights complaint pursuant to 42 U.S.C. § 1983 and an application to proceed without prepaying the fees and costs for the civil rights action pursuant to 28 U.S.C. § 1915(a).

Although Plaintiff allegedly lacks funds to pay the filing fee for this action, he had a current spendable balance of \$636.96 in his prison account as of January 4, 2008 when an administrative officer at the prison certified his financial statement. Moreover, the Court notes that the government provides Plaintiff with food, clothing, and shelter such that requiring payment of the filing fee for this action will not force him to go without necessary incidentals.

*See Lyon v Krol*, 127 F.3d 763, 765 (8<sup>th</sup> Cir. 1997). The Court concludes from the financial data before it that Plaintiff has not established indigence and that he should be able to prepay the filing fee for this action.

Accordingly, the Court **DENIES** Plaintiff's application to proceed without the prepayment of fees and costs and **DISMISSES** the complaint **WITHOUT PREJUDICE**. Plaintiff may resubmit his complaint with the \$350.00 filing fee. The Court makes no determination as to the merits of the complaint.

**IT IS SO ORDERED.**

S/Arthur J. Tarnow  
Arthur J. Tarnow  
United States District Judge

Dated: January 28, 2008

I hereby certify that a copy of the foregoing document was served upon party/counsel of record on January 28, 2008, by electronic and/or ordinary mail.

S/Catherine A. Pickles  
Judicial Secretary